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Responding to Gun Crime in Ireland

Gun crime in Ireland

Until recently, the conventional political and popular view of Ireland was as a peaceful society in which the use of guns was unusual. The basis for this perception lay in historically low crime rates, an unarmed police force (apart from 1,700 armed plain clothes detectives), the absence of a right to bear arms, and a strict gun licensing scheme. Despite this historical and cultural context, the past decade has seen a surge of concern about gun crime, with media and political discourse portraying an increasingly grave and widespread phenomenon: “the appearance of a variety of guns in the pursuit of crime has become commonplace” (Dáil debates 2005, Vol.603, col. 1166); there has been a “proliferation” of guns in society (Dáil debates 2005, Vol.603, col. 1171); “many of our urban areas are terrified by rampant gangland crime, which is apparently making huge parts of the country ungovernable” (Fine Gael Press Release 2006). Though the true extent of the problem may be contested, and despite exaggerated media reports, gun crime has undoubtedly increased. However, in responding to this undeniable problem, the Irish State has adopted an unduly narrow perspective predicated on a rational actor model; what this paper seeks to do is suggest two potentially valuable ways of analysing the problem, namely by focusing on social deprivation and the expression of masculinity.

In contrast to political commentary, official statistics indicate a nuanced picture in relation to non-fatal gun crime in Ireland, where possession and discharge of firearms has increased, but armed robbery rates are declining. Since 2000 there has been an increase in the number of offences known to the police concerning the possession and discharge of firearms,¹ respectively from 179 in 2001 to 462 in 2008 in the case of the former, while the latter rose from 163 to 224 (An Garda Síochána 2000-2007). However, given special initiative “Operation Anvil” which has specifically targeted organised and gun crime in Dublin since 2005 and nationwide since 2006, it is not clear whether there has been a

¹ The definition of firearm has been expanded from meaning “a lethal firearm or other lethal weapon of any description from which any shot, bullet, or other missile can be discharged” (s 1, Firearms Act 1925), to a broader definition which includes air guns of a certain strength, cross bows, and stun guns (s 26, Criminal Justice Act 2006).

genuine increase in the occurrence of such criminality or whether the higher rates result from focused police work. Moreover, the number of robberies involving firearms has decreased. From a base level of single figures in the 1960s, armed robberies in Ireland escalated in the 1970s as a result of the conflict in the North (Brewer *et al.* 1995-6: 148-9); figures peaked at 685 in 1986, but fell to 300 in 2007 (CSO 2009:72). The bid to safeguard against such robberies by “target hardening” financial institutions through CCTV, time-locked safes and sophisticated alarm systems, has rendered staff more vulnerable, as may be seen in “tiger kidnappings” where money is extorted by kidnapping an individual employee of the bank and family (Matthews 2002: 51-2). Despite sensationalist media coverage (e.g. *Sunday Business Post*, 28/12/2008, “How can Gardaí tame the tiger kidnappings?”), figures for such crimes remain very low, with two tiger kidnappings in 2005, rising to six in 2008 (Dáil debates 2009, Vol.676, col.905).

Nevertheless, the key, and arguably justifiable, generator of public fear and political action is the indisputable rise in killings by firearm. As regards homicides in general, the rate in Ireland in 2006 was 1.63 per 100,000 population, and 1.95 in 2007 (CSO 2009: Table 1.4a), in comparison to 1.42 in England and Wales and 5.6 in the US in 2005-2006 (United Nations 2005-06: table 2.3). Thus, while recent figures indicate some fluctuation, relatively speaking, the rate remains at a low level. What is of more concern, though, is the proportion of these killings carried out by guns, given the increased likelihood of fatality, the potential for harm to others, and the lower conviction rate. Since 1999 at least 15 per cent of homicides² each year have been carried out by guns, and indeed, on occasion, the rate has risen to more than 40 per cent. As may be seen from the table below, when compared with corresponding percentages for England and Wales, proportionally speaking between twice and five times as many homicides involving guns occur in Ireland. This lends credence to the political claim in Ireland that robust and novel measures are warranted, given the severity and extent of this specific problem. (Figure 1 here.)

In addition to the statistical rise in the use of guns in fatal attacks, such homicides seem to have changed from being “crimes of passion” in the context of spousal relationships or concerning land disputes between known individuals (as is evident from

² Homicide in this paper refers to murder and manslaughter, but not other crimes of causing death.

the descriptions of serious crimes which were included in police reports until 1960³), to premeditated killings often perpetrated by more than one individual. Firstly, the victims of such crimes differ from those in the past. Research carried out by the Royal College of Surgeons on gun deaths between 2001 and 2005 found that 66 per cent of victims were, as is euphemistically termed, “known to the Gardaí” (see Dáil debates 2006, Vol.629, col. 1671) or had previous criminal associations (*Irish Examiner*, 11/4/2007, “40% of gun deaths linked to drug crime”). Similarly, police statements and media reports indicate that many firearms-related deaths comprise the assassination of those involved (or at least suspected of being involved) in the illegal drugs trade or other criminal activity (e.g. *Irish Times*, 22/1/2009, “Legacy of ‘Marlo’ Hyland leaves trail of bodies in its wake”).

Secondly, the perpetrators of gun homicides differ from those in the past, leading to far lower detection rates on the part of the police, and thus a lower chance of conviction. Dooley (2001: 16-7) notes that of fifteen “gangland/organised crime” killings between 1992 and 1996 (7.3% of 205 homicides), a perpetrator was detected in eight cases, and three cases resulted in conviction (twenty per cent). This was significantly lower than in the study as a whole in which 57.6 per cent of homicides (118 of 205) resulted in a conviction. This is explicable, at least in part, by reference to Dooley’s finding that in all cases the perpetrator left the scene of the crime and made no admission of guilt or involvement. The low levels of detection and prosecution for gun homicides have since been highlighted in Parliament, where a member of the Dáil (lower House) claimed that of 127 “gangland killings” since 1998, 113 of these did not result in any conviction (i.e. 11 per cent conviction rate) (Dáil debates 2008, Vol.668, col. 106). This is in contrast to a detection rate of 83 per cent for homicide in general in 2007 (CSO 2009: table B2). Although the statistics on which this claim was based were not revealed, the Minister for Justice did not deny this assertion. Though statistically questionable, given the low figures involved, the detection rate for homicides involving firearms does indicate a noticeable decline in the past decade. (Figure 2 here.)

The rising rate of gun possession and discharge, the increasing proportion of homicides involving guns, and the poor detection rate for such crimes contribute to a

³ Until 1960 the annual Garda Síochána Report included a description of each murder, which indicated that they usually could be regarded as intimate /spousal homicides, homicides concerning a specific dispute (i.e. over land), or homicides in which the perpetrator appeared to suffer from a mental illness.

marked fear of gun crime. As a consequence, the Irish State has adopted a range of measures, often on an ad hoc and reactionary basis, in which pre-trial protections for the accused have been eroded.

A state of emergency

The State views gun crime as portending a state of emergency or crisis which merits extraordinary legal measures, a phenomenon which has been commented upon with some scepticism in much criminological literature (Cohen 1972; Hall *et al.* 1978; Garland 2001: 19-20). Indeed, the perception that this is a criminal justice crisis beyond that normally encountered might appear to be substantiated by the statistical rise in some such crimes, the low detection and prosecution rates, and the incidental deaths of bystanders (see e.g. *Irish Times*, 12/12/2006, “Funeral of murdered plumber held”; 11/11/ 2008, “Murder of rugby player ‘marks a new low’”; 7/7/ 2009, “Father saw wounded son lying on ground”). Moreover, the spatial and emotional distance of using a gun for violence may facilitate acts of aggression that a person may otherwise not commit (Kleck and Hogan 1999: 276), thereby prompting the fear of potential further violence. The level of concern is evident in the assertion of the previous Minister for Justice that that “the drug and gun culture ... poses as significant a threat to the wellbeing of the Irish State and Irish society as the paramilitaries did at any stage of their campaign for a quarter of a century” (*Irish Times*, 25/1/2007, “Gardaí investigate drugs link in latest shootings”), and reiterated in comments which state that Ireland is “more akin to downtown Bogotá than a modern European capital” (Labour Party 2005); that the increase in “gangland” killings has been “enormous” and “inordinate” (Dáil debates, 2006, Vol.617, col. 78) and that “[l]ife seems to be cheaper” (“Ireland a more violent place, says Garda chief”, *Irish Times*, 12 January 2009). As a result, anti-terrorist measures are used directly in the context of gun crime, and furthermore, extraordinary tactics have been replicated in legislation that pertains to a broader range of crime.

The most pointed example of this emergency paradigm is the straightforward use of anti-terrorist legislation against those suspected of gun crime. Persons suspected of any crime which involves the use or possession of a firearm may be searched and arrested

under the anti-terrorist Offences against the State Act 1939, because firearms and explosives offences under the Firearms Act 1925 are included in a schedule to the 1939 Act (SI No 334 of 1940). Section 30(1) of the 1939 Act (as amended) permits a police officer to stop, search, interrogate and arrest without warrant any individual he suspects of having committed or being about to commit an offence under the Act, including, as a result of the schedule, *any* firearm offence under the Firearms Act 1925, including the crime of possession of firearms with intent to endanger life. The suspicion of the officer need not be reasonable, unlike the criterion required for the general power of stop and search (Criminal Law Act 1976, section 8) and for arrest without warrant (Criminal Law Act 1997, section 4). Moreover, if an individual is arrested and detained under the 1939 Act, he may be held for up to 72 hours, rather than the standard 24 hours for “ordinary” offences (Criminal Justice Act 2006, section 9).

Thus, gun homicide investigations often involve arrest under the 1939 Act even if the suspect does not have subversive links or does not threaten the security of the state (McDermott 2002: 49; e.g. *Irish Times*, 14/3/2009, “Three held over Dublin gangland killing”; 9/7/2008, “Six arrested over feud-related gangland murder in Limerick city”), and even if the suspect is a minor (*Irish Times*, 9/12/2008, “Gun victim endured anti-social campaign”). From 1 June 2006 to 7 April 2007, 692 people were arrested under section 30 (Seanad debates 2007, Vol.186, col. 2052), demonstrating the continued use of this provision, although figures concerning the proportion of these arrests which results in a charge are not available, nor are figures on those related to non-terrorist crime. Though murder and manslaughter do not fall within the remit of the 1939 Act, the Gardaí may circumvent this limitation by arresting the individual for a related scheduled offence. So, for example, a person suspected of a gun killing could be arrested for the scheduled offence of unlawful possession of a weapon, and then could be questioned in relation to the homicide and the scheduled offence for the extended period permitted under the 1939 Act without the requirement of reasonable belief of the arresting officer. While Supreme Court jurisprudence indicates that such a tactic is not permissible if the scheduled offence is a mere “colourable device” which the police have no real interest in pursuing, in practice this does not impose rigorous constraints (*State (Bowes) v Fitzpatrick* [1978])

ILRM 195; *People (DPP) v Walsh* [1986] IR 729; *People (DPP) v Howley* [1989] ILRM 629).

The State may also limit the right to silence of a person accused of gun homicide. Under section 52(1) of the 1939 Act, a Garda may demand a full account of the movements and actions of a suspect detained under the Act for a specified period of time, in addition to his knowledge regarding the commission or intended commission by another person of an offence under the Act. This power applies to any offence under the Offences against the State Acts 1939-1998 and scheduled offences, and as noted above, the latter include firearms offences. Failing to give such information or giving false information is an offence for which a person may be imprisoned for up to six months, thus extending far beyond an inference-drawing provision to one which actively punishes the silence of the accused. Nevertheless, the constitutionality of section 52 was upheld in *Heaney v Ireland* [1996] 1 IR 580, where the restriction of the right to silence was deemed to be proportionate with respect to the section's aims of investigating and punishing serious, subversive crime. The Supreme Court adjudged that the right of the citizen to remain silent was of lesser importance than the right of the State to protect itself and to maintain public peace and order. Such reasoning was not accepted by the European Court of Human Rights on the basis that the "degree of compulsion ... destroyed the very essence of [the accused's] privilege against self-incrimination and his right to remain silent" and could not be justified by the security and public order concerns of the Irish State (*Quinn v Ireland* (2001) 33 EHRR 264), and the Committee to Review the Offences against the State Acts has recommended the section's abolition (2002: para. 8.60). Furthermore, it seems that the domestic court's rationale is undermined by the use of section 52 against a broad range of suspected criminal behaviour which does not necessarily impinge on the existence of the State. Despite this, section 52 remains on the statute books as a powerful tool in countering gun crime.

In addition to the direct use of the Offences against The State Act 1939, policy makers seek to combat gun crime by emulating other measures that first were used in anti-terrorist legislation. As Walsh (1989: 1101) noted, emergencies in Irish legal history prompted by subversion have "spawned" "ordinary" criminal justice legislation which poses a great, long-term threat to civil liberties, and this trend has continued unabated

(Kilcommins and Vaughan 2007: 79 *et seq*). For instance, the aforementioned tactic of lengthy detention permitted by the 1939 Act has been repeated and extended to seven days in section 50 of the Criminal Justice Act 2007 for murder involving the use of a firearm or an explosive; murder of a Garda, prison officer or head of State; possession of a firearm with intent to endanger life; and false imprisonment involving the use of a firearm, thereby demonstrating how emergency measures have seeped into the broader criminal justice sphere. This fits with Gross's contention (2003: 1090-2) concerning the "normalisation of the extraordinary", namely that increasing dosages are required to deal with each new crisis, and that what was once unthinkable is made acceptable by perceived necessity and thereby continued.

The view that, to all intents and purposes, a state of emergency exists in Ireland because of the level of gun homicides is supported by the apparent link between paramilitary actors and the burgeoning "gun culture", as has been emphasised by the Minister for Justice (Dáil debates 2008, Vol.667, col. 539), the police (Parliamentary questions, 2/10/2008, #69); parliamentary debates (Dáil debates 2009, Vol.677, col. 724; 2005, Vol.603, col. 1171), and by academic commentators and journalists (McCullagh 1996: 37; Williams 2001). Former subversives are seen to become involved in armed robbery for personal gain, as "criminal entrepreneurs" (Select Committee on Northern Ireland Affairs 2003: para. 64) or "criminal diversifiers" (Dorn and South 1990: 177) who will engage in any activity if the potential profit is sufficiently high; their knowledge about weaponry may be disseminated to other criminal groups, or they may be involved in the supply of weapons (Select Committee on Northern Ireland Affairs 2006: chapter 2, paras. 11-23; 2003: para. 65). As it seems that the existence of subversive crime has contributed, to some extent at least, to gun crime in Ireland, it is logical, although not justifiable, that the State has continued the tradition of using extraordinary measures to deal with this phenomenon.

While defining an emergency is not easy (Gross 1998: 437), in a constitutional sense such a state does not exist in Ireland because of gun crime, nor is the Government or the parliament under threat from subversive bodies. There has been no parliamentary declaration under Article 28.3.3° of the Irish Constitution of a national emergency which affects the vital interests of the State (see Kilcommins and Vaughan 2004: 57), nor a

formal declaration of derogation under Article 15 of the European Convention on Human Rights. In the context of gun crime, the Irish State has blurred the distinction between a very serious social problem and a national emergency (Hudson 2003: 218), and the emergency measures in place have moved from being conservative in nature so as to safeguard or regain the constitutional status quo to being a permanent aspect of the legal system (Gross 2003: 1070-1; Kilcommins and Vaughan 2007: 73). This erosion of traditional procedural rights is facilitated by the process of differentiation evident in political discourse about those suspected and convicted of gun crime when compared with “decent people” (Seanad debates 2007, Vol.186, col. 2088). Similar sentiment may be found in statements like “[a]nyone who deals in or is in possession of firearms has no place in society” (Dáil debates 2005, Vol.607, col. 1531), and after a fatal shooting those responsible were described in political debate as “animals” who “have stepped outside the bounds of humanity” (*Irish Times*, 10/4/2009, “Gardaí investigate if murder linked to court case”). Such opprobrium may be explained by reference to the “criminology of the other” (Garland 2001: 135 *et seq.*) which, through its demarcation founded on differences and stereotypes, facilitates a diminution in concern for the “other”. Indeed, the perspective of the gun criminal as “other” may be rationalised by the unarmed police and the low levels of private gun possession in Ireland, and the fact that, as is explored in more detail below, most young men do not demonstrate aggression through the use of potentially lethal weapons. This demarcation between those suspected of a gun-related offence and the rest of the community renders palatable the slow and steady erosion of due process rights, as does the presumption that these robust powers will not be misused or invoked against any “factually innocent” (Packer 1968: 160 *et seq.*) person.

The dominant narrative on gun crime

As outlined, the Irish State is gripped by a sense of panic regarding the phenomenon of gun crime, which informs the nature of its reaction. Further measures addressing this type of criminality demonstrate that the primary explanation adhered to by the State is an instrumental one, in which the actor is purely rational and thus amenable to deterrence through lengthy punishment. Although this view seems to conflict with the political

rhetoric, which adopts a “criminology of the other”, such contradictions are not uncommon in late-modern criminal justice systems (Garland 2001; O’Malley 1999). A criminology of the other, if accepted and realised consistently in practice, could preclude retribution on the basis that the actors were not fully rational or capable. Thus, to facilitate the imposition of robust sentences to punish and deter a “rational actor”, a degree of logic on the part of the criminal is invoked (albeit not explicitly), underpinned by the broader presumption made in the criminal process that individuals are reasoning calculators whose behaviour is governed by “two sovereign masters, *pain* and *pleasure*” (Bentham 1970: 11; 165; Beccaria 1995: 31). The current manifestation of this classical line of thought is the rational choice model which contends that offenders seek to benefit themselves by their criminal behaviour, and thereby make decisions and choices which involve some level of rationality and self control, although they need not be well-informed (Cornish and Clarke 1986: 1-2; Akers 1990: 665).

One implicit justification for the State’s view of the gun criminal as rational is due to the apparent link between many gun homicides and the market in illegal drugs (e.g. Dáil debates 2007, Vol.635, Priority questions 572; *Irish Times*, 24/2/2009, “Gangland crime fuelled by rise in drug smuggling - FG”). Indeed, Hales *et al.* contend that in England and Wales “illegal drugs markets represent the single most important theme in relation to the use of illegal firearms” (2006: 65), echoing Goldstein’s “systemic model” which suggests that illegal drug distribution and use are connected intrinsically with violent crime, including disputes regarding organisation, territory, quality or quantity of drugs, enforcement of codes, sanctioning of other buyers and sellers, and debt collection (1985; 1986: 513; also UN Office on Drugs and Crime 1998: 37; Agozino *et al.* 2009: 293). Similarly, in England and Wales Bennett and Holloway (2004: 250) found that firearm ownership is most common in violent offenders, gang members and those involved in selling drugs. Although comparable qualitative data on the personal experiences of gun users and offenders is not yet available in the Irish context, the link between guns and drugs in Ireland is clear: they are often imported together (Cross-Border Organised Crime Assessment 2008: 8); the Customs Service ascribe a rise in the detection and seizure of illicit firearms being imported “to the increased level of violence involved in drug trafficking and smuggling” (see National Report 2008 on Eradication of

Illicit Trade in Small Arms) and many gun homicides are reported as being connected to disputes about illegal drug distribution (e.g. *Irish Times*, 14/3/2009, “Man killed and woman injured in gangland shooting”). Furthermore, O’Mahony explains the changing nature of crime in Ireland to involve greater use of firearms by reference to the heroin “epidemic” in the 1980s (2008: 60-1). Indeed, due to the drug trade lying beyond the realm of legal regulation, recourse to violence seems inevitable (Jacobs *et al.* 2002: 3-18) and a necessary component of successful drug dealing (Squires *et al.* 2008: 65). Violence discourages and eradicates competition, and protects markets (Arlacchi 1988: 89-91; Boyd *et al.* 1991: 74; Topalli *et al.* 2002). Moreover, the retaliatory action of a wronged drug dealer is informed by the motives of deterrence, revenge and incapacitation (Topalli *et al.* 2002), in a truly Hobbesian response. It is ironic that while this paper will later contend that the State’s deterrence model is unlikely to succeed, the response of some of those involved in gun and drugs criminality is itself informed by such rationales, as a proxy for state punishment.

Given that a proportion of gun crime in Ireland is undoubtedly linked to drug trafficking, and due to the influence of the conventional and individualistic legal conception of agency, the Irish State appears to view gun crime as rational and thus responds in a way that stresses deterrence, as we shall see, by the imposition of lengthy presumptive sentences. Although such sentences may serve incapacitative or social defence purposes by the detention of perpetrators who are “sub-human” (*Irish Times*, 10/4/2009, “Gardaí investigate if murder linked to court case”) and immune to reason, political rhetoric is focused more on the “substantial deterrent” (Department of Justice Press Release 2004) element of these penalties: “if a criminal knows he will get 15 years in prison for firing a gun, he might think twice before he pulls the trigger” (Dáil debates 2006, Vol.617, col.86); “it is timely that criminals should fear our criminal justice system” (Dáil debates 2007, Vol.634, cols.691-2); and “[w]e need to send a clear message to the members of criminal gangs that crime does not pay” (Dáil debates 2007, Vol.635, Priority questions 572). Furthermore, the Court of Criminal Appeal (*DPP v Larkin* [2008] IECCA 138) has noted the deterrent value of robust sentences for gun crime.

Calls for “mandatory minimum” sentences for gun offences were first heard in the Irish Parliament in 1986 (Vol.366, cols. 2108-9), but were dismissed by the Minister for Justice on the basis of possible constitutional problems and the lack of public concern at the penalties then imposed; a general call for more robust measures against gun crime was also rejected the following year (Dáil debates 1987, Vol.374, Written Answer 71). However, the perceived increase in gun crime in the past decade prompted further demands for harsher sentences, with one Member of Parliament calling for mandatory life sentences to be “the norm” for those possessing or hiding illegally held arms (Dáil debates 2005, Vol.607, col. 1531). Although this particular request was not implemented, Part Six of the Criminal Justice Act 2006 introduced a scheme of presumptive sentences “in view of the harm caused to society by the unlawful possession and use of firearms”. Prior to this, the only presumptive sentence was provided by section 15A of the Misuse of Drugs Act 1977 (as inserted by the Criminal Justice Act 1999) for the possession of drugs valued greater than €13,000 with intent to supply. This was described judicially as “a revolutionary alteration superimposed on the conventional principles of sentencing” (*DPP v Dermody* [2006] IECCA 164). Nevertheless, there was unanimous political support for “stronger sentences” (Dáil debates 2007, Vol.634, col. 691) for firearms offences, and so the 2006 Act introduced a broader range of presumptive sentences. The presumptive sentences include ten years for the possession of a firearm with intent to endanger life or cause serious injury or to enable another person to do so (section 42) and for using a firearm while resisting arrest or in the course of an escape (section 58); and five years for offences such as using a firearm when taking a vehicle without authorisation (section 57), possessing a firearm in suspicious circumstances or with criminal intent (sections 59 and 60). These presumptive sentences do not apply to first time offences where the court is satisfied that there are exceptional and specific circumstances relating to the offence or offender which would make the minimum term of imprisonment unjust in all the circumstances, and for this purpose the court may have regard to whether the person pleaded guilty to the offence, if so the stage at which the intention to plead guilty was indicated, and whether the person assisted materially in the investigation. This exceptional circumstances qualification is demanded by the constitutional principle of proportionality, which requires the sentence to be cognisant of

the offence but also the offender's personal circumstances (*State (Healy) v Donoghue* [1976] IR 325). Thus, the drive to impose presumptive robust sentences is tempered by the norms of the Irish Constitution. However, the 2006 Act imposes a true mandatory sentence where an adult is convicted of a second or subsequent such firearms offence.

The imposition of presumptive sentences as a means of deterring gun crime is premised on an unduly simplistic conception of the actor. Qualitative studies of gun criminals indicate that the decision to commit the act is rarely driven by "rational" considerations *per se* and so such research challenges the deterrent value of robust sentences. In Matthews' interviews with imprisoned armed robbers in England, he found little or no awareness of security measures or amount of money available at the crime scene, or of the possible sentence or likelihood of being caught (2002: 37). Similarly, a casual and unplanned approach on the part of robbers (both armed and otherwise) is evident in Feeney's research, although professional and persistent armed robbers were more likely than amateurs or intermediate actors to incorporate elements of rational considerations (1986: 66). Other English research indicates that the choice of weapon and the methods of realising the act itself are rational decisions (Morrison and O'Donnell 1997: 313), influenced by the desire to either intimidate or incapacitate the victims, or, in the context of replica weapons, the avoidance of an actual shooting. Moreover, in the US Jacobs and Wright found that for armed robbers the decision to commit the crime was motivated most directly by a perceived need for fast cash, but that this decision stems from and is shaped by participation in street culture and that rationality as such "barely exists" (1999: 167). These studies seem to echo Hirschi's approach of limiting rational choice to specific criminal events, that is, a theory of crimes, rather than propounding a general theory of criminality or involvement, *viz.* a theory of offenders (1986: 105). In other words, the individual's decision to commit crime in a broad sense may not be influenced by rational factors, but his choice as to where and when to commit the act may indeed be governed by such reasoning. Drawing on this, it may be contended that the perpetrator of gun crime thinks rationally in the context of the act itself, such as regarding the choice of weapon, the time of day, the location and the number of people involved, but that his ultimate involvement in gun crime must be interrogated using more than the rational actor paradigm.

As outlined, empirical research indicates that it is dubious to assume that the criminal actor may be deterred on the basis of a straightforward cost-benefit analysis. This, in essence, undermines a key aspect of the logic behind robust sentences for gun crime in Ireland. Morrison and O'Donnell identify that while robbers appeared to consider rationally the potential rewards of the offence, they put less effort into examining the possible costs (1996: 178). Similarly, Piliavin *et al.* (1986: 115) conclude that although individuals are influenced by the potential opportunity and reward of a crime, there is no evidence to suggest that the risk element of the rational choice model impacts on their decision to commit a crime. Furthermore, Morrison and O'Donnell (1996: 179) indicate that few robbers believe they will be caught, thereby weakening the case for deterrent sentences as a strategy for controlling robbery. This is reiterated by Hales *et al.* who note that individuals who perceive a high risk to themselves will only be marginally, if at all influenced, by more punitive approaches (2006: 95). Given the low detection levels for gun homicides in Ireland (see Figure 1), any apparent inability of discretionary sentencing practice to deter gun offences is overshadowed by the current failure to detect such crimes and the obvious concomitant absence of punishment. Thus, it is unlikely that presumptive sentences will have any effect on the commission of gun crime generally or homicides more specifically. Indeed, the efficacy of similar sentencing schemes in other jurisdictions has been questioned on the basis that broader trends of drug taking and other societal factors have far more impact on the commission of gun crime than do mandatory sentences (Zimring and Hawkins 1973). For example, the imposition of mandatory minimum sentences in Virginia, by prosecuting illegal gun possession at the federal rather than state level, was found not to have a noticeable effect on gun homicides when a previous increase in such homicides, linked to the increase in crack sale by young men in the city, was factored in, and indeed equivalent federal programmes elsewhere did not result in a comparable decrease, indicating the importance of extra-legal factors (Jens and Ludwig 2003: 274; similarly see Marvell and Moody 1995).

Wright and Rossi (1986: 139) comment that if the use of guns is purely instrumental, in terms of seeking to increase the efficiency of crime, then deterrent punishments may work. However, if the use or possession of the gun serves a broader

purpose or possesses a deeper meaning then punishment will not deter the actor. Though gun crimes often represent a means of attaining certain material objectives, this does not lead to the conclusion that this type of criminality is wholly or always rational in nature. Nevertheless, the policies in place operate in a legal vacuum in which the social, structural, and material causes of criminality and the meaning of the crime for the actor are, by and large, neglected. Next an attempt will be made to present alternative explanations for gun crime in Ireland and to advocate a revision of criminal law and policy from a position that incorporates rational choice but also recognises the importance of a form of masculinity and acknowledges the significance of urban deprivation. Gun crime in Ireland ought to be understood as a multi-faceted phenomenon rooted in a number of aetiological factors, and for this reason it is useful to analyse it through a variety of theoretical lens.

Alternative explanations

As outlined, some gun crime in Ireland is linked to the growth in drug trafficking, and so may be conceived of as functional, goal-directed violence or aggression. However, as is evident from empirical data in the UK and US, gun crime may also possess a certain meaning for the actor, in terms of status generation or maintenance, and the concomitant demotion of his opponents, a factor of which policy makers in Ireland should be cognisant. Furthermore, and again echoing the experience of other countries, gun crime in Ireland is concentrated as we shall see in areas of relative deprivation and so may represent a manifestation of anomie in an unequal society.

Expression of masculinity

As is the case elsewhere, in Ireland women commit far fewer crimes than men, and this is even more pronounced for crimes perpetrated by firearm. Since 2003 no women have been convicted of discharging a firearm and for firearm possession between 0 to 4 per cent of convictions are for women (CSO 2009: table 11.3). The proportion of women convicted for armed robbery which often involve the use of guns is also very low (*ibid*,

71), and while homicide figures divided by gender and weapon are not available, no more than two women have been convicted of murder or manslaughter in any one year since 2003 (*ibid*, table X.3). Empirical research from many countries points to the link between masculinity and criminality, where criminality derives from and is a product of the construction of masculinity in social settings where aggression and a gendered conception of reputation is valued (Brookman *et al.* 2007; Hochstetler and Copes 2003; Hobbs *et al.* 2003; Messerschmidt 1993; Miller 1998: 50; Mullins 2006; Pogrebin *et al.* 2009; Totten 2003). However, the relatively low figures for gun crime in Ireland indicate that the use of guns is not bound up with society's "hegemonic masculinity" (Connell 1987) which remains centred on traditional expectations of self-sufficiency, assertiveness and provision for one's dependents (Ferguson 2001). While the configuration of masculinities in Ireland has changed dramatically due to the rural to urban change (CSO 2006:35; Kennedy 2001: 240) and while problematic trends exist (like high levels of alcohol consumption (Anderson and Baumberg 2006: 83, 94) and high suicide rates (CSO 2009: 43)), being a man in Ireland does not consist of or centre on the possession or use of weapons, and indeed, the majority of men do not use or own guns. Mirroring Brookman *et al.*'s (2007: 880) comment in relation to the UK, manhood is not interconnected with handgun usage in Ireland as it is in the United States. Thus it seems unlikely in Ireland that conceptions of masculinity of gun offenders echo those of mainstream society, as has been argued in the US context (Hagedorn 1997:153).

Instead, violence often represents a means of accomplishing masculinity when other means of doing so are curtailed or unavailable due to the social situation of the actor (Daly and Wilson 1988: 128; Gibbs and Merighi 1994: 79; Messerschmidt 1993). Gun possession and violence may be used as a means of control, of expressing power and as "tools of impression management" which garner respect and safeguard a tough reputation (Gilligan 1997: 103-114; Matthews 2002: 29; Stretesky and Pogrebin 2007: 85) by men who do not have alternative, peaceful means of acquiring status or demonstrating influence. Thus, it might be argued that the ontological insecurity experienced by certain facets of male society is sought to be remedied by means of aggressive and confrontational posturing and action with guns.

Katz argues (1988: 321) that crime consists of a “transcendent project to exploit the ultimate symbolic value of force to show that one ‘means it’”. Thus gun crime need not necessarily or predominantly hold an instrumental purpose but may be perpetrated in a bid to reassert the actors’ role as “hardmen” who must stay “out there”. If one’s purpose in life is defined by and centres on violence, failure to use violence would raise chaotic questions about this purpose. This is akin to Hallsworth and Silverstone’s (2009: 365) depiction of men involved in gun crime as being “on road”, by following a path or progressing to a destination characterised by hyper-aggressive masculinity. As Matthews (2002: 37) contends the active pursuit of risk and danger by armed robbers cannot be explained by rational choice theory, nor, following this, can the bravado of those involved in gun crime and homicide be credited to reason alone. Thus, to deal with gun homicides adequately the Irish State needs to acknowledge the cultural and emotional power of guns and the drive for status on the part of certain men. Moreover, given O’Donnell’s description of penal institutions as “crucibles of masculinity: places where distorted – and destructive – forms of male identity are forged” (2004: 241), the desire to imprison gun criminals, not just those convicted of gun homicide, would concretise such a role or status rather than serving to alter behaviour in any way.

The expression of a violent form of masculinity through gun crime may be especially relevant when considering the actions of young men and teenage boys, given that developmental immaturity may result in ill-considered actions and render the actor more vulnerable to negative influences (Steinberg and Scott 2003: 1010). In the US, for example, a significant proportion of gun crime is perpetrated by young offenders (see Blumstein 1995; Cherry *et al.* 1998; Wilkinson and Fagan 1996; Sheley and Wright 1995; Zimring 1998). However, the situation in Ireland is markedly different. While a number of media stories have focused on the use and possession of guns by teenagers (for example *Irish Independent*, 17/11/2009, ‘Boy (15) held for brandishing gun as father fought on street’) and though teenagers have been the victims of gun assaults (see *Irish Independent*, 3/9/2009, ‘Feud gang face probe over teen gun attack’), the number of minors convicted of firearms possession or discharge ranges from zero to five per annum from 2003 to 2007 (CSO 2009: table 11.3), from the hundreds of such offences which occur each year. Though the precise levels of such crime may be masked from official

statistics by the issuance of police cautions circumventing a court hearing or by acquittal for evidential or legal reasons, it seems that, relatively speaking, gun crime is not a grave problem relating to young people in Ireland. Moreover, while weapon and age breakdown is not available for homicide figures, there has only been one murder conviction of a minor per year since 2004, and there is no evidence that these acts involved firearms. In late 2008 a teenage boy was charged with murder for a fatal shooting although he has not yet been tried (*Irish Times*, 11/12/2008, 'Boy (16) charged with murder over East Wall shooting'; 9/12/2008, 'London-style juvenile murder has begun to secure a foothold in Ireland'), and this may be the first "gun homicide" trial of a young offender. Despite this, at present the commission of gun crime in Ireland remains mostly the preserve of adult offenders, thus explaining the lack of any policies, legal or otherwise, which seek to deal with guns and young offenders, and the exclusion of minors (aged at the time of conviction) from the presumptive sentences introduced by the Criminal Justice Act 2006.

The absence of qualitative evidence or ethnographic research in Ireland on gun crime means that any suggestion of a link to certain forms of masculinity remains tentative at present.⁴ However, it may be that the generation and demonstration of masculinity leads to crime when social deprivation cuts off other options; in other words that gun crime emerges when relative deprivation blocks off more acceptable modes of expressing masculinity, such as through work, fast cars and so on.

Relative deprivation

It will now be suggested that relative material deprivation is an additional, and indeed complementary, means of explaining the commission of gun crime in Ireland, drawing on theoretical and quantitative insights from other jurisdictions. Merton (1969: 131-60) saw anomie as ever-present in certain strata of US society, not due to insufficient regulation, but rather from a lack of structured and legitimate means for people to attain the ultimate and paramount societal goal of wealth. More recently, Currie (1997) has extended this line of thinking to posit that it is the market society which causes violent crime. He

⁴ Indeed, the absence of ethnographic research in Ireland has been noted previously (McCullagh 1996: 144).

claims that unregulated markets engender greed, selfishness and materialism; erode informal support networks; lead to the withdrawal of public services and progressively destroy livelihoods, leading in turn to alienation and family problems, a lack of role models and an absence of any appropriate means of asserting masculinity. The centrality of material wealth and the extent to which unemployment is synonymous with failure/rejection indicates how inequality produces feelings of relative deprivation and thwarted ambition (see also Box 1987; Young 2008).

Currie's contentions about the market society, imbued with a neo-liberalist ethos, have the potential to help to explain the commission of gun crime in Ireland. It has been argued that the embracing of privatisation and free market precepts by all mainstream political parties facilitated the emergence of an Irish variety of this political creed (Kirby 2002: 160 *et seq.*), where state competitiveness in the global economy is a primary goal of public policy, and where societal and political antipathy exists towards taxation. Crucially, social polarisation grew rather than decreased with the wealth brought by the "Celtic Tiger", and although the absolute poverty rate fell, relative poverty increased substantially (UN 2005: tables 4 and 15; 334--5; Kirby 2002: 160). The divergence in wealth had substantial consequences for social cohesion which is crucial in preventing increases in the homicide rate in times of economic inequality (Kawachi *et al.* 1999; Savolainen 2006). In the US, economic disadvantage is linked to all types of homicide (Kubrin 2003: 160) and economic inequality is correlated strongly with violent firearm crimes (Kennedy *et al.* 1998). Research in England and Wales also indicates that gun crime is most prevalent in areas characterised by deprivation, unemployment and a visible criminal economy (Marshall *et al.* 2005: 13; Hales *et al.* 2006: 61).

In Ireland, gun crime occurs predominantly in certain locations; the intersection of unemployment, poverty and an urban milieu seems most problematic in the creation of such criminality. The rate of homicide in Ireland in 2007 (the most recent full figures available) shows a concentration in the Dublin Metropolitan Region (DMR) and in Limerick: the national rate was 1.95 per 100,000 population, the rate in the DMR overall⁵ was 2.46, the highest was 5.11 in South Central DMR, and Limerick was 3.60 (CSO

⁵ The Dublin Metropolitan Region is subdivided in Eastern DMR, North Central DMR, Northern DMR, South Central DMR, Southern DMR and Western DMR.

2009: Table 1.4a). A similar pattern was evident in 2006: the national rate was 1.95, with a rate of 2.68 in the DMR, 3.15 in Limerick, and the highest rate of 8.8 in North Central DMR. As regards gun homicides, there are no publicly available statistics specifying geographical location, so media reports in the *Irish Times* have been used to determine the concentration of such criminality. Again, the Dublin Metropolitan Region holds a concentration of gun homicides, and the most noteworthy rate is in North Central DMR which far exceeds the national rate. Western DMR and Limerick are also above the average (while Kerry, a predominantly rural county, also shows a high rate in 2008, this is explicable by reference to the commission of two gun homicides in one incident and is unlikely to be repeated).

(Figures 4 and 5 here.)

As seen in Figure 4, the rate for robberies involving firearms is greatest in the DMR, in particular Central DMR and Western DMR. Similarly, Figure 5 demonstrates that certain parts of Dublin, namely North Central DMR and Western DMR, have rates double the national average for firearms offences, which comprise incidents of possession and firearm discharge. Furthermore, Limerick is exceptional at more than three times the national rate, and it seems unlikely that such statistical disparity can be explained by reference to police discretion and increased police presence alone. Thus, it may be seen that gun crime in Ireland occurs predominantly in areas marked by deprivation and unemployment. Despite the positive effects of inward migration and gentrification and rising employment and education levels in inner city Dublin, pockets of the capital are still marked by high levels of unemployment, drug use and deprivation (Haase 2008: 11). It appears that the economic boom did not benefit particular parts of Central DMR, which suffer from the same problems of “extreme disadvantage” as was the case in 1991; however these areas are far smaller and so the district as a whole avoids the categorisation of “extremely disadvantaged” (*ibid*: Figs 1.51 and 1.6). Moreover, Western DMR includes the districts of Tallaght and Clondalkin which are described as “very disadvantaged” (Haase and Pratschke 2008: 1.1.02). The majority of gun crime, in particular gun homicides, occur in these areas of deprivation in Dublin and in Limerick, which is the worst urban area in terms of ratio of poverty to national average (Watson *et al.* 2005: Map 4.4). Limerick is the second most disadvantaged county in Ireland (the

most deprived is the rural county of Donegal); the relative deprivation of Limerick City has steadily increased over the past fifteen years, and the city is seen to include the country's most disadvantaged urban areas (Haase 2008: 1.1.20). Moreover, the rates of unemployment for Limerick city in 2006 were the worst in Ireland, at 15.7% male unemployment and 12.6% female unemployment, at more than triple the national rate. (However, the repercussions of the recession and the growing rate of unemployment have yet to be felt (from approximately 6% in 2008 to more than 11% in 2009 see <http://www.cso.ie/statistics/sasunemprates.htm>). This disparity between strata in society may result in anomie, as has been argued by O'Donnell previously (2005: 111 *et seq*).

Indeed, the Irish State has moved towards accepting the validity of such theoretical insights by addressing social exclusion through Dublin City Council's Regeneration projects and by the statutory establishment of the Limerick Regeneration Agencies. While the Report to the Cabinet Committee on Social Inclusion (2007: para 2.1) noted the high rates of crime in parts of Limerick, there was no reference to gun crime, although drug use and sale were emphasised. The recommendations called for intensive policing, improved access and infrastructure, the addressing of the drugs problem and regeneration of housing. The assumption is that these improvements will have an effect on criminality, although it is of interest that the sponsoring state Department is the Department for the Environment, Heritage and Local Government rather than the Department of Justice, Equality and Law Reform. Thus, while deprivation is acknowledged in a broad sense in the context of crime prevention, a direct link has yet to be drawn in policy between it and gun crime more particularly.

Concluding remarks

Although media commentary on the extent of gun crime in Ireland may often involve moral entrepreneurs seeking to engender and exploit a moral panic (Becker 1963; Cohen 1972), the rise in firearm related homicides and the declining conviction rate emphasise that a problem does indeed exist. The Irish State appears to possess a particularly heightened sensitivity towards gun crime, which though worsening in certain respects, is far from the legal emergency described in political rhetoric and evident in the existing

criminal justice response. This sense of panic, rooted in a criminology of the other, has permitted the steady erosion of due process norms and values. Moreover, and simultaneously, the Irish State advocates a presumptive sentencing model based on the desire to deter the gun criminal, predicated on a rational actor paradigm. Despite much empirical evidence to the contrary, such an approach is thought likely to be effective in countering gun crime.

By opening up the debate on the explanations of gun crime in Ireland, an attempt was made here to broaden the lens through which we view such acts and to encompass deeper consideration of the links between gun crime and a) the expression of masculinity and b) relative deprivation. While these proposed alternative interpretations are not definitive reasons for gun crime, nonetheless they should inform the policies introduced to counter such behaviour, in the criminal justice context and otherwise. Indeed, the uncommon nature of these acts and the incontrovertible link to social deprivation indicates that Ireland, unlike a “pistolized” (Sheptycki and Edwards 2009:259) society such as the US, may begin to address this phenomenon realistically through extra-legal measures. An adequate and comprehensive response to gun crime should be cognisant of the link to poverty and the drug market (Bowling 1999) and incorporate educational rather than legal approaches alone. Given that the possession and use of guns is not routine, targeted psychology programmes for “at risk” young men who come to the attention of the police and for convicted gun offenders may address this violent expression of masculinity (akin to the existing sex offenders’ treatment programme in Arbour Hill Prison, Dublin). Furthermore, as Sherman (2001: 17 *et seq*) notes, patrols in high risk places at specific times have proved effective in reducing gun violence in the US; thus it appears that rather than increasing sentence length or abrogating the rights of the accused, targeted policing, an increase in economic equality and a holistic educational approach would have more effect on the commission of gun crime in Ireland.

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TABLES:

Figure 1: Percentage of homicides (murders and manslaughter) involving firearms

(Dáil debates (2008), Vol.652, col.110; and CSO 2009: Table 1.5; Povey *et al.* 2009: table 2.02)

CSO

	Total number of homicides	Homicides involving firearms	%		% in England and Wales
1998	51	4	7.8		7.2
1999	46	12	26.1		6.5
2000	56	12	21.4		8.1
2001	58	9	15.5		8.6
2002	59	10	16.9		10.9
2003	51	21	41.2		7.7
2004	45	9	20.0		8.0
2005	65	22	33.8		9.0
2006	70	27	38.6		6.5
2007	84	19	22.6		7.8
2008	55	21	38.2		6.8

Figure 2: Detections and convictions of homicides involving firearms, 1998–2008
(Dáil debates 2008, Vol.652, Col.110; CSO 2009, table 1.5)

	Homicides involving Firearms	Detected	% detected	Proceedings commenced	Convictions
1998	4	3	75	2	1
1999	12	7	58.3	7	5
2000	12	7	58.3	3	1
2001	9	5	55.5	2	1
2002	10	5	50.0	3	1
2003	21	10	47.6	3	1
2004	9	7	77.7	4	3
2005	22	5	22.7	2	2
2006	27	7	25.9	5	2
2007	19	6	31.6	2	0
2008	21	6	28.6	0	Unknown

Figure 3: Recorded gun homicides, 2008-2009⁶
(Irish Times)

	2008		2009	
	Reported gun homicides	% gun homicides	Reported gun homicides	% gun homicides
State	20	100	21	100
DMR total	12	60	18	85.71
Eastern DMR	0.00	0.00	0.00	0.00
North Central DMR	3	15	1	4.76
Northern DMR	3	15	5	23.81
South Central DMR	0.00	0	1	4.76
Southern DMR	1	5	2	9.52
Western DMR	5	25	9	42.86
Cork City	0.00	0.00	0.00	0.00
Limerick	3	15	1	4.76
Sligo/Leitrim	1	5	0.00	0.00
Donegal	1	5	0.00	0.00
Kerry	2	10	0.00	0.00
Cavan/Monaghan	1	5	0.00	0.00
Wexford/Wicklow	0.00	0.00	1	4.76
Clare	0.00	0.00	1	4.76

⁶ Although 21 gun murders were recorded by police in 2008, only 20 such crimes were reported in the media, thus the table above totals 20 murders.

Figure 4 - Robbery where firearms were used, incidents recorded per 1,000 population (CSO 2009: Table 6.6)

	2006		2007	
	Recorded	Per 1,000 population	Recorded	Per 1,000 population
State	390	0.09	300	0.07
DMR total	246	0.20	190	0.15
Eastern DMR	23	0.10	18	0.08
North Central DMR	28	0.35	29	0.36
Northern DMR	46	0.16	36	0.12
South Central DMR	36	0.31	35	0.30
Southern DMR	31	0.13	26	0.11
Western DMR	82	0.29	46	0.16
Cork City	7	.03	16	0.07
Limerick	12	.06	9	0.05

Figure 5 – Firearms offences (possession and discharge), incidents recorded per 1,000 population (CSO 2009: Table 11.4b)

	2006		2007	
	Recorded	Per 1,000 population	Recorded	Per 1,000 population
State	721	0.17	753	0.17
DMR	277	0.22	291	0.23
Eastern DMR	16	0.07	25	0.11
North Central DMR	24	0.30	29	0.36
Northern DMR	66	0.23	71	0.24
South Central DMR	17	0.15	25	0.21
Southern DMR	56	0.24	40.	0.17
Western DMR	98	0.34	101	0.35
Cork City	22	0.1	21	0.09
Limerick	131	0.69	139	0.72